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NEWS

One MSU investigator found a doctor's sexual comments violated policy. The other did not.

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EAST LANSING — A Michigan State University alumna is questioning the university's process for handling sexual misconduct complaints after she received two different outcomes — one concluding the doctor did violate MSU policy and one finding he did not.

Kristin Ray wrote an email to a neurology doctor's supervisors after he made several inappropriate, sexual comments during her appointment. She said she never intended to open a sexual harassment investigation.

She just wanted the doctor's supervisors to understand how uncomfortable she was during her appointment so they could discipline or train the doctor as needed.

"The university as a bigger whole needs to understand they haven't gotten it right yet," Ray said.

Initially, in July, investigator Demetrius Peterson, who works at law firm Husch Blackwell, found the doctor violated the university's sexual harassment policy.

Four months later, that decision was nullified because of a clerical error in the Office of Institutional Equity.

Her case then went in front of resolution officer Kamil Robakiewicz. On Feb. 1, he found the doctor did not violate university policy.

The two decision-makers came to nearly identical conclusions.

The only difference: Peterson found the doctor's behavior to be persistent. Robakiewicz did not.

Robakiewicz decided the doctor's comments did not violate the university's sexual harassment policy. Ray appealed the decision and is waiting on the results of that.

University spokesperson Dan Olsen said he could not comment on an ongoing case, but said MSU "remains committed to promoting a safe and inclusive working and learning environment. Furthermore, it is our top priority to ensure a timely, fair and equitable grievance process."

Olsen said decision-makers go through "uniform and consistent training" to make sure they're using the same criteria to make determinations.

The investigation focused on four comments:

> The doctor told Ray she "looked much younger than [her] listed age," which Ray said she found off-putting, but she took it as a compliment.
> While discussing birth control methods, the doctor told what he called a "bad joke" and asked if she had tried the "aspirin method," where a woman sticks an aspirin between her knees.
> The doctor told Ray cervical cups were "not real sexy to use when you have to say, 'wait a minute while I put my cup in'" after Ray said she was uncomfortable with that method of birth control.
> He asked Ray if her husband was around.

The doctor did not respond to a State Journal reporter's request for comment. He is not being named because the university found he did not violate the sexual harassment policy.

The doctor told Peterson that he was "not aware of the hypersensitivity surrounding physicians at the University" as he had recently come from a practice in a different state.

Of the comments Ray reported, Peterson determined three of the four took place, were unwelcome and were of a sexual nature. In totality, they were persistent enough to violate university policy.

Peterson said these successive sexual remarks during an initial meeting would make a reasonable person feel uncomfortable. He said the persistence of the comments would impact someone's experience and the ability to receive treatment.

He described the doctor's conduct as "objectively offensive."

Robakiewicz determined all four took place and were unwelcome, and said three of the four were of a sexual nature. But the comments "fall short of being persistent or pervasive," he wrote in his report.

"They were made within the context of an appropriate medical discussion, but the specific statements exceeded the scope of what was appropriate," Robakiewicz wrote. "A reasonable person in [Ray's] position would have found [the doctor's] statements unprofessional and inappropriate."

Clerical error

The two different resolutions in Ray's case has left her wary of the system meant to handle sexual misconduct, she said.

"I understand they're human and humans interpret things differently, but I can't get past the fact that we wouldn't be here had that clerical error not existed," Ray said. "It's not fair to the victim to be jerked around like this. All I can think about is the woman who was hurt more than me, traumatized more than me and maybe not in a place to emotionally withstand something like this."

In a June 23 letter from the university asking Ray and the doctor if they wanted to have a hearing, Ray's written deadline was June 30. The doctor's was May 30, which had already passed.

After the finding was dismissed in November, the doctor asked to hold a hearing, despite deciding not to do so the first time around.

The timing of the clerical error being found is suspicious to Ray, she said. She doesn't understand why the doctor would bring it up after four months.

"This guy didn’t get what he wanted in the finding, and somehow he found the error he needed to get it overturned," Ray said. "It’s not just a coincidence."

What is 'persistent'?

MSU's sexual harassment policy does not define the words "persistent, severe or pervasive," despite all decisions resting on those words.

This is one of two mentions of those words:

> "The unwelcome behavior is so severe, persistent, or pervasive that it causes an unreasonable interference with the individual's work or educational performance by creating an intimidating, hostile, or demeaning environment for employment, education, University living, or participation in a University activity or program. This can be referred to as 'hostile environment.'"

Ray said she based her appeal on this notion. She argued that the doctor's comments unreasonably interfered with her medical care, as she does not ever plan to see MSU-affiliated doctors again, she said.

"I know I will never step foot in a MSU Health Team office again unless it's my only option," Ray said.

Impressed by the university's initial response

Ray said she was impressed at the responses she received from Norman Beauchamp, executive vice president for health sciences, and Aron Sousa, interim dean of the College of Human Medicine.

In an email, Sousa said "[t]he physician's behavior is completely unacceptable and inexcusable. You came to us seeking help and we failed you...This behavior will be addressed. It falls so short of the professionalism that you, and all patients, deserve."

She worked at MSU from 2015 to 2019, during the immediate fallout after the Larry Nassar sex abuse scandal.

As she went through the OIE process, Ray said it was well-explained and went on as it should. She said she found comfort in that, like her university was taking good care of her.

That changed once she had to go through the process a second time.

"I said something to my husband to the effect of, 'The world just told another woman she needed to keep her legs together,'" Ray said. "It's just exhausting. To have another man be told that's OK to say to someone. I say another because, I guess, how are we still here? How are we still talking to women, about women, like this?

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